

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Investigation on the Commission's own motion into the operations, practices, rates and charges of the Hillview Water Company, Inc., a corporation, and Roger L. Forrester, the principal shareholder and president,

Respondents.

Investigation 97-07-018  
(Filed July 16, 1997)

**ADMINISTRATIVE LAW JUDGE'S RULING ON MOTION  
TO DISMISS ALLEGATIONS REGARDING UNLAWFUL SUPPLY  
AND STORAGE CHARGES AND FRAUDULENT LOANS**

On October 18, 2001, respondent Hillview Water Company, Inc. (Hillview) filed a motion seeking dismissal of allegations in the Order Instituting Investigation (OII) to the effect that Hillview obtained unlawful supply and storage fees from customers, and engaged in a series of loan transactions regarded by reviewing staff as fraudulent. Hillview argues that relief relating to these allegations, whether or not they are meritorious, is time barred by applicable statutes of limitations, because the respective limitations periods had run before the OII was issued.

Ordering Paragraph (O.P.) 2 of the OII states that Hillview may be fined if the Commission finds that it violated Pub. Util. Code §§ 491, 581, or 825, or Rule

of Practice and Procedure (Rule) 1.<sup>1</sup> O.P. 5 states that if violations are found, a separate phase of this proceeding may be used to determine Hillview's revenue requirement, set rates, and ensure that any wrongful charges to customers are refunded.

Incorporating by reference a number of statutes cited in the prefatory text of the OII, O.P. 1 puts the respondents on notice that they may be fined or otherwise sanctioned by the Commission for violating Sections 532, 454(a), 491, 581, 825, and 827 of the Public Utilities Code. These provisions of the Code in pertinent part prohibit a utility from charging its customers fees that are not allowed in its filed tariffs and from obtaining a loan without Commission authorization. O.P. 3 required the Commission staff to serve an audit (or investigative) report on the respondents and other interested parties at an early stage of this proceeding. The Commission is impliedly expected to rely upon this report for the details of the respondents' allegedly wrongful conduct, and thus for defining the issues to be addressed in this proceeding.

The investigative report (Report) was issued on November 20, 1997, and was formally received for the record for purposes of evaluating a settlement proposal that was being considered by the Commission at the time. (Exhibits (Exhs.) D-1 and D-2.) The Report concludes, among other things, that Hillview demanded and charged its customers supply and storage fees other than those specified in its filed tariffs in violation of Pub. Util. Code §§ 451, 454(a), 489, and 532, and violated the prior authorization requirement of Pub. Util. Code §§ 818 and 825 by obtaining and misrepresenting the intended use of loans in a multi-

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<sup>1</sup> Authority to impose fines for violating these statutes and rules is found in Pub. Util. Code § 2107. Section 2108 provides that each day of a continuing violation constitutes a separate and distinct offense for purposes of imposing such fines.

part transaction. (Report, Chapters 2 and 5.) These portions of the Report consequently identify two of the subjects concerning which testimony may be received, and issues that are expected to be decided, by the Commission.

Hillview argues that allegations in the OII regarding unlawful charges received from new customers for supply and storage and regarding fraudulent loan transactions should be dismissed on the grounds that they are time barred by applicable statutes of limitation. Inasmuch as factual allegations cannot be “dismissed,” I construe this as a motion in limine to foreclose evidence relating to these issues from being considered by the Commission by reason of being time barred. With regard to the supply and storage fees, Hillview’s concern is with the possibility of the Commission imposing liability for violation of Pub. Util. Code § 451, requiring that all charges demanded or received by a utility be “just and reasonable”; § 454(a), prohibiting any change from being made to any rate, classification or service without Commission authorization; § 489, requiring utilities to file all rates and charges in its tariffs; and § 532, prohibiting a utility from charging a rate for any service that is not specified in its filed tariffs. With regard to the fraudulent loan allegations, Hillview’s concern is with possible liability for violation of Pub. Util. Code § 818, prohibiting a utility from issuing bonds, notes, or other evidences of indebtedness without prior Commission authorization; and § 825, which declares all evidences of indebtedness issued without prior Commission approval to be void.

The Water Branch (WB) of the Office of Ratepayer Advocates (ORA), which was at that time serving as the Commission’s staff advocate in this proceeding, filed a timely response to the motion on November 11, 2001. Unfortunately, that response fails to address the issue at hand, but instead offers a fruitless argument that the Commission should resurrect the settlement

proposal, which had already been repudiated by Hillview, and was later rejected altogether by the Commission in Decision 02-01-041 (January 9, 2002).

At some point after that response was filed, WD assumed the advocacy role in this proceeding, and a corresponding substitution of counsel was made. Oral argument on Hillview's motion was held on January 14, 2002, at Hillview's request. In anticipation of that argument, on January 9, 2002, WD asked leave to file another pleading titled, "Water Division's Memorandum for Oral Argument on the Statute of Limitations," in light of the change of staff advocacy representation. This document is filed, and I have considered it in issuing my ruling today.

Regarding the substance of the motion, as explained above there is nothing relating to the two issues raised by Hillview that can be "dismissed" at this juncture. The investigation at this stage is focused on creating a factual record for the purpose of making findings that relate to possible violations of Rule 1 (the Commission's Code of Ethics), as well as the statutes cited above. Hillview has not demonstrated that the facts recited in the OII or disclosed by the Report are immaterial to every conceivable statute or rule, the possible violation of which Hillview is on notice. At this point those facts are incomplete. Until the relevant facts are more fully developed, I cannot determine what relief is (or is not) time barred. Therefore, I cannot rule on Hillview's motion at this time. However, Hillview's motion does create serious uncertainty about the Commission's power to grant much of the relief contemplated by the OII and recommended in the Report. Also, I am unaware of any authority to support the argument in WD's reply that the applicable statutes of limitation do not bar relief because the individual customers are effectively the real parties in interest. Accordingly, I am modifying my February 6, 2002, Ruling to require that the parties expressly address these issues.

**IT IS THEREFORE RULED** that:

1. Hillview's Motion to Dismiss Allegations Regarding Unlawful Supply and Storage Charges and Fraudulent Loans is denied without prejudice. The issues raised in the motion may be renewed by objection or motion at such time as there are facts of record to enable these issues to be addressed.

2. The issues to be discussed by the parties under Paragraph 2 of the Administrative Law Judge's Ruling on Procedural Matters issued February 6, 2002, shall include those raised by Hillview's motion. The parties shall meet and confer, and shall file their joint statement, pursuant to Paragraph 2, no later than 30 days from the date of this ruling.

Dated April 16, 2002, at San Francisco, California.

/s/ VICTOR D. RYERSON

Victor D. Ryerson  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on Motion to Dismiss Allegations Regarding Unlawful Supply and Storage Charges and Fraudulent Loans on all parties of record in this proceeding or their attorneys of record.

Dated April 16, 2002, at San Francisco, California.

/s/ KE HUANG

Ke Huang

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.